

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

MELVIN JOSEPH SIMMONS,  
Plaintiff,  
v.  
BRIAN CATES, et al.,  
Defendants.

No. 1:23-cv-0856 JLT GSA (PC)

**ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS, DISMISSING THE  
ACTION WITHOUT PREJUDICE, AND  
DIRECTING THE CLERK OF COURT TO  
CLOSE THE CASE**

(Doc. 22)

Plaintiff initiated this action by filing a complaint against the defendants—including Brian Cates; Kathleen Allison, Secretary of the CDCR; and Los Angeles County—asserting violations of his civil rights. (*See generally* Doc. 1.) Plaintiff began to refuse the Court’s mail in August 2023. Consistently since that time, communications from the Court were returned with notations from the Postal Service including: “Undeliverable, Inmate Refused;” “Undeliverable, Refused,” and “Undeliverable, RTS, Not Deliverable as Addressed, Unable to Forward, Refused.”

The magistrate judge found the repeated refusal of the Court’s communications demonstrates that “Plaintiff has actively chosen to abandon this case.” (Doc. 22 at 3.) Therefore, the magistrate judge recommended the action be dismissed. (*Id.* at 4.) The Court served the Findings and Recommendations on Plaintiff and notified him that any objections were due within 14 days. (*Id.*) However, the Findings and Recommendations were also returned as undeliverable by the USPS on January 17, 2024.

1 According to 28 U.S.C. § 636(b)(1)(C), this Court performed a *de novo* review of the  
2 case. Having carefully reviewed the matter, the Court concludes the Findings and  
3 Recommendations are supported by the record and proper analysis. Pursuant to Local Rule  
4 182(f), service of documents at the record address of the party is fully effective, even if returned.  
5 Further, the repeated refusal of Court mail indicates a plaintiff “plainly does not intend to proceed  
6 with prosecuting [the] action.” *See Ilsung v. Yeh*, 2021 WL 5179262, at \*1 (E.D. Cal. Nov. 5,  
7 2021), *recommendations adopted* 2022 WL 800993 (E.D. Cal. Mar. 16, 2022) (dismissing the  
8 action without prejudice). Thus, the Court **ORDERS**:

- 9 1. The Findings and Recommendations issued January 2, 2024 (Doc. 22) are  
10 **ADOPTED** in full.
- 11 2. This matter is **DISMISSED** without prejudice.
- 12 3. The Clerk of Court is directed to close this case.

13  
14 IT IS SO ORDERED.

15 Dated: **February 8, 2024**

  
UNITED STATES DISTRICT JUDGE